

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 25 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

FRANCISCO MARTINEZ-MACHADO,

Petitioner

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent

No. 05-72153

Agency No. A78-462-895

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2008**

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Francisco Martinez-Machado, a native and citizen of Honduras, petitions for review of the Board of Immigration Appeals' ("BIA") decision dismissing his

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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appeal from an immigration judge's ("IJ") order denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence. *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA's determination that Martinez-Machado's asylum application was untimely because the underlying facts are disputed. *See* 8 U.S.C. § 1158(a)(3); *Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007)(per curiam).

The record does not compel the conclusion that Martinez-Machado would more likely than not be persecuted on a protected ground, so substantial evidence supports the BIA's denial of withholding of removal. *See Al-Harbi v. INS*, 242 F.3d 882, 888-89 (9th Cir. 2001).

Because Martinez-Machado failed to show it is more likely than not that he would be tortured if returned to Honduras, substantial evidence supports the denial of CAT relief. *See Bellout v. Ashcroft*, 363 F.3d 975, 979 (9th Cir. 2004).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.